

SUPREME COURT OF YUKON

Citation: *Yukon (Government of) v. Leduc*,
2014 YKSC 12

Date: 20140313
S.C. No. 13-AP013
Registry: Whitehorse

Between:

GOVERNMENT OF YUKON

Appellant

And

ROMEO LEDUC

Respondent

Before: Mr. Justice Veale

Appearances:

Julie DesBrisay
Romeo Leduc

Counsel for the Appellant
Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] Romeo Leduc was acquitted of the strict liability offence of burning slash brush and debris in an unauthorized location approximately 325 metres east of the designated location in his burning permit.

[2] The Government of Yukon appeals the acquittal on the ground that the trial judge erred in finding that a defence to this strict liability offence was available on the facts before him.

THE FACTS

[3] The facts are not in dispute.

[4] On April 3, 2013, the Government of Yukon issued a burning permit to Duke Ventures Ltd., a company owned by Romeo Leduc, for two specific locations. The locations were specified by GPS coordinates and the locations were verbally explained to Mr. Leduc who signed the burning permit.

[5] A Forest Officer observed Mr. Leduc burning slash in an unauthorized location on April 15, 2013, approximately 325 metres east of the specified locations.

[6] On May 22, 2013, the Forest Officer issued a ticket under the *Summary Convictions Act*, R.S.Y. 2002, c. 210, for resource harvesting contrary to the cutting permit issued to Duke Ventures Ltd., which is a breach of s. 15(1) of the *Forest Resources Act*, S.Y. 2008, c. 15.

[7] Although the Forest Officer's evidence was essentially unchallenged, the trial judge asked Mr. Leduc if he thought that the burning permit allowed him to burn anywhere on the cutting permit block. Mr. Leduc replied in the affirmative.

The Trial Judge's Decision

[8] The trial judge found that Mr. Leduc's conduct was premised on a reasonable belief in a mistaken set of facts. Based on Mr. Leduc's earlier practice with respect to burning on the site, the trial judge found that he reasonably believed that he was permitted to burn in the location he did.

[9] The trial judge found Mr. Leduc not guilty by reason of mistake of fact.

DISPOSITION

[10] The issue in this case is whether the trial judge erred in finding that Mr. Leduc made a mistake of fact sufficient to establish a due diligence defence. I find that the trial

judge made an error in this regard. Mr. Leduc knew he was not burning in the locations designated on the permit. He made no error of fact and therefore has no defence.

[11] Section 15(1).2 of the *Forest Resources Act*, states:

No person may undertake or cause to be undertaken forest resource harvesting except in accordance with a harvesting licence, a cutting permit, a forest resources permit or as provided by the regulations.

[12] Regulatory offences are strict liability offences unless they contain language such as “wilfully”, “with intent”, “knowingly” or “intentionally”, none of which are found in s. 15(1) of the *Forest Resources Act*. See *R. v. Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299, at 1326.

[13] Therefore, once the Crown proves the prohibited act, the onus is shifted to the accused to show that he acted with due diligence, or reasonable care on the balance of probabilities. See *Sault Ste. Marie*, at para. 55.

[14] The accused must establish that he reasonably believed in a mistaken set of facts which, if true, would have rendered his act innocent. See also *La Souveraine, Compagnie d’assurance générale v. Autorité des marchés financiers*, 2013 SCC 63, at paras. 31 – 33.

[15] In this case, Mr. Leduc took no steps to ascertain the true state of affairs. He simply did what he had done in the past despite having had the permit and the specific designated burning locations explained to him. He was not mistaken about the fact that he was not in one of the designated locations.

[16] In this case, Mr. Leduc knew exactly where he was and that he was not in a designated location. He thought he could burn there as he had done so in the past, even though the burning permit did not permit the burning of slash in that location. This

is a mistake in law. For a similar case, see *R. v. Ram Head Outfitters Ltd.*, [1995] N.W.T.J. 30, at paras. 22 – 24.

[17] To put it another way, Mr. Leduc mistakenly believed he had the legal right to burn where he did.

[18] The trial judge erred by finding a mistake of fact rather than a mistake of law which provides no defence to a strict liability offence. I therefore overturn the acquittal and convict Mr. Leduc of the offence. I sentence Mr. Leduc to a fine of \$150 plus a victim fine surcharge of \$22.50, with 30 days to pay.

VEALE J.